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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,226	04/09/2001	Kevin A. McIntyre	3598-2	5634

7590 12/11/2003

NIXON & VANDERHYE P.C.
1100 North Glebe Rd., 8th Floor
Arlington, VA 22201-4714

EXAMINER

FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/828,226

Applicant(s)

MCINTYRE, KEVIN A.

Examiner

Daniel S Felten

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, filed April 30, 2003 and presented at personal Interview on April 22, 2003 with respect to claims 1-23 and 25 have been fully considered and are persuasive. Therefore the finality of claims 1-23 and 25 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rossides (US 5,749,785).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-23 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The word "if" connotes a conditional statement that suggests (or requires) alternative limitation(s), step(s) and/or methods to be also presented in the independent claim. For instance, there is no limitation from the independent claim(s) of what happens if the overlap region does not exist.

Also re claim(s) 8 and 9: The applicant also recites the limitation of a "theoretical" price point. What does this term "theoretical" mean in the claim? Is there a difference between a "theoretical" price point and an "actual" price point in the practice of applicant's invention? What is the distinction between the two?

Art Unit: 3624

Also Re claim 11: the applicant recites a method that provides a component for preventing gaming, but fails to disclose steps on how the provided component prevents gaming.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rossides (US 5,749, 785) and Rackson et al ("Rackson", US 6,415,270) in view of each other.

Re claims 1, 17, 19, 20 and 25:

Rossides discloses a computer system having a computer program utilizing a method of conducting a transaction between two parties in the form of a bet (see Rossides, col. 6, ll. 30-31)

(a) receiving a lower limit price for a product from the first party making a bid and/or bet (see Rossides, col. 38, ll. 1)

the second party (Beth) being unaware of the first party's (Jim) lower limit price (see Rossides, col. 40, ll. 31-33);

(b) receiving an upper limit bid for the product from the second party (Beth), *the first party (Jim) being unaware of the buyer's upper limit bid (see Rossides, col. 40, ll. 36-39);*

(c) comparing the first party's (Jim's) lower limit price and the second party's (Beth's) upper limit bid (see Rossides, col. 40, ll. 40-59); and

(d) when an overlap region exists between the first party's (Jim's) lower limit and the second party's (Beth's) upper limit bid, setting a price point for the production within the overlap region that is based on the lower limit price and the upper limit bid (see Rossides, col.40, ll. 60 to col. 42, ll. 37).

Rackson discloses transactions between buyers and sellers over a global network (see Rackson, see fig. 2, col. 8, ll. 1) In view of Rackson's teaching it would have been obvious for an artisan at the time of the invention to integrate the notoriously old and well known global network into Rossides' invention because an artisan at the time of the invention would have recognized the convenience of using a global network (such as the internet) to electronically make transactions between computers over remote distances. Thus such a modification would be considered an obvious expedient well within the ordinary skill in the art.

On the other hand, it would have been obvious for an artisan of ordinary skill at the time of the invention to employ the notoriously old and well known "split the difference" method (see, col. 40, ll. 29+), because an artisan of ordinary skill at the time

Art Unit: 3624

of the invention would have recognized that such a method could be used in a bidding regime to provide a “fair” price that would meet both party’s expectations. Thus to employ would have been an obvious expedient well within the ordinary skill in the art.

Re claim 2:

Rossides discloses wherein when an overlap exists between the first party’s (Jim’s) lower limit price and the second party’s (Beth’s) upper limit bid, step (d) is practiced by setting the price point for the product at a midpoint of the overlap region (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 3:

Rossides discloses further comprising (e) when an overlap region does not exist between the first party’s (Jim’s) lower limit price and the second party’s (Beth’s) upper limit bid, further processing the transaction according to system parameters region (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 4:

Rossides discloses wherein step (e) is practiced by terminating the transaction (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 5:

Rossides wherein step (e) is practiced by notifying the seller and the buyer that an overlap region does not exist and requesting the seller and the buyer either (1) adjust the respective lower limit price (adjusted stakes) and upper limit bid, or (2) terminate the transaction (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 6:

Rossides discloses after step (e), either (1) receiving an adjusted lower limit price and adjusted upper limit bid and repeating steps (c)-(e), or (2) receiving an instruction to terminate the transaction (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 7:

Rossides discloses after step (e) receiving one of an adjusted lower limit price or an adjusted upper limit bid, and repeating steps (c)-(e) (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 8:

Rossides discloses wherein step (e) is practiced by setting a theoretical price point between the lower limit price and the upper limit bid (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Art Unit: 3624

Re claim 9:

Rossides wherein step (e) is practiced by setting a theoretical price point at midpoint between the lower limit price and the upper limit bid (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 10:

Rossides discloses providing the seller and the buyer with an opportunity to agree on the theoretical price point, completing the transaction only when both the seller and the buyer agree on the theoretical price point, and otherwise terminating the transaction (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 11:

Providing a component for preventing gaming of the system (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 12:

Wherein step (e) is further practiced by displaying a shortage region representing a difference between the lower limit price and the upper limit bid to the seller and the buyer (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

Art Unit: 3624

Re claim 13:

Wherein step (a) is further practiced by receiving a lower limit price range from the seller that varies with time (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 14:

Step (b) is practiced by receiving an upper limit range from the seller that varies with time (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 15:

Wherein step (a) is practiced by additionally receiving an expiration relating to the product and by receiving an expiration relating to the product by receiving a lower limit price range from the seller that varies with time to the expiration (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 16:

Wherein step (b) is practiced by additionally receiving an expiration relating to the upper limit bid and by receiving an upper limit bid range from the buyer that varies with time the expiration (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 18:

Further comprising compiling a database of information relating to sellers, buyers, products and price points (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 21:

Wherein when an overlap region exists between the seller lower limit price and the buyer upper limit bid, the setting means sets the price point for the product at a midpoint of the overlap region (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 22:

Further comprising means for further processing the transaction according to system parameters when overlap region does not exist between the seller lower limit price and the buyer upper limit bid (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Re claim 23:

Wherein the means for further processing the transaction sets a theoretical price point between the lower limit price and upper limit bid (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

Conclusion

1. A list of relevant prior art appears below not relied upon in this Office Action:
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ***Daniel S. Felten*** whose telephone number is (703) 305-0724. The examiner can normally be reached between the hours of 7:00AM to 5:30PM Monday-Thursday. Any inquiry of a general nature relating to the status of this application or its proceedings should be directed to the Customer Service Office (703) 306-5771, or the examiner's supervisor ***Vincent Millin*** whose telephone number is (703) 308-1065.

Response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

for formal communications intended for entry, or (703) 305-7687, for informal or draft communications, please label AProposed@ or ADraft@. Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to *[daniel.felten@uspto.gov]*.

All Internet e-mail communications will be made of record in the application file.

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DSF

December 3, 2003



**VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600**